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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-128

To: Chief, Common Carrier Bureau

REPLY OF AMERICAN PUBLIC COMMUNICATIONS COUNCIL TO OPPOSITIONS TO PETITION FOR RECONSIDERATION

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REPLY OF AMERICAN PUBLIC COMMUNICATIONS COUNCIL TO OPPOSITIONS TO PETITION FOR RECONSIDERATION

The American Public Communications Council ("APCC") hereby replies to oppositions to its petition for reconsideration, in part, of the Common Carrier Bureau's Memorandum Opinion and Order, DA 98-481, dated March 9, 1998 ("Order"), in which the Bureau clarified local exchange carriers' ("LECs") obligations under the Payphone Reconsideration Order[1] to provide the "payphone-specific" ANI digit codes necessary for payphone service providers ("PSPs") to qualify for per-call payphone compensation.

[1] Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Order on Reconsideration, FCC 96-439, released November 8, 1996 ("Payphone Reconsideration Order"), vacated in part, Illinois Public Telecommunications Ass'n v. FCC, 117 F.3d 555 ("Payphone I"), clarified, 123 F.3d 693 (D.C. Cir. 1997).

APCC requested reconsideration of the Bureau's ruling that:

> LECs are required to provide payphone-specific coding digits only from those payphones that are connected to tariffed payphone lines (for dumb, smart, and inmate payphones) as compared with, for example, payphones connected to business or Centrex lines.

Order, ¶ 32. The parties opposing reconsideration – US West and the RBOC/GTE/SNET Coalition – fail to refute APCC's showing that the Bureau's ruling conflicts with the Payphone Reconsideration Order and with federal local competition policy.

I. THE ORDER IS CLEAR

In their oppositions to APCC's petition for reconsideration, US West and the RBOC/GTE/SNET Coalition fail to come to grips with the plain meaning of the Commission's Payphone Reconsideration Order. The Commission could hardly have expressed itself less ambiguously: it "decline[d] to require PSPs to use COCOT lines. . . ." Payphone Reconsideration Order, ¶ 64. US West and the RBOC/GTE/SNET Coalition stress that the Commission's stated reason for not requiring PSPs to use COCOT lines was "because we have previously found that COCOT service is not available in all jurisdictions." Id.; US West at 3. While this was the Commission's stated *reason*, there is no basis for reading into this reason an implied affirmative obligation to subscribe to COCOT lines in jurisdictions where COCOT service is available but where the use of alternative services such as business lines is allowed.

US West also claims that a requirement to subscribe to payphone lines should now be imposed because payphone-specific access lines "are now available in all jurisdictions." US West at 4. Even if US West's statement were true, that would not empower the Bureau to amend the Reconsideration Order's clear ruling that there is no requirement to subscribe to such lines in order to receive compensation. But in any event, it is not the case. Based on information recently submitted by some APCC members, the following LECs, among others, do not to the best of our knowledge offer specific payphone lines for smart payphones:

East Otter Tail Tel. Co. (MN)
Bretton Woods Tel. Co. (NH)
Champlain Valley Telecom (VT)
Northland Tel. Co. (VT)
Shoreham Tel. Co. (VT)
TDS Telecom (VT)
Vermont Tel. Co. (VT)
Waitsfield Telecom (VT)

The fact that these LECs do not offer payphone lines further belies US West's claim that the Bureau may now require the use of such lines as a condition of payphone compensation.

II. THE BUREAU'S RULING CONFLICTS WITH FEDERAL POLICY ON LOCAL SERVICE COMPETITION

Neither the RBOC/GTE/SNET Coalition nor US West offers any credible way to square the Bureau's ruling with the clear federal policy to promote local competition through resale of local service. 47 U.S.C. § 251(c)(4).

US West attempts to reconcile the ruling with federal policy by flatly denying that payphone service is a "retail" service subject to Section 251(c)(4) resale. US West at 5. In fact, as APCC explained in its petition, the FCC has already ruled that payphone service is a "retail" service, as have a number of state commissions. Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499, ¶ 876 (1996), ("Local Competition Order") vacated in part, Iowa Utilities Board v. FCC, 123 F.3d 753 (8th Cir. 1997).

Therefore, the federal policy to promote local competition through resale must be taken into account in the Commission's rulings implementing Section 276. Where LECs such as US West seek to frustrate this federal policy by refusing to make payphone lines available to resellers at wholesale rates, the Commission must ensure that its rulings on federal payphone issues preserve the integrity of its local competition and payphone competition policies. Although US West states that it has reduced PAL rates in Minnesota to the same level as flat-rated business service, it has not changed its policy of refusing to allow resale of these PAL lines at wholesale rates. As a result, payphone providers continue to be denied the benefits of local service competition.

As for US West's wild allegations that APCC's requested relief would be anticompetitive (US West at 6), they are entirely baseless. APCC agrees that rates for access to LEC networks should be equally available to LEC-affiliated and independent payphone providers. But under the "outcome that the APCC is seeking" they would be. US West has elsewhere stated that a substantial percentage of its payphone base is smart payphones. Thus, US West is already positioned to subscribe its payphones, if it wishes, to business lines or even to resellers offering discounted wholesale business lines.[2]

III. US WEST's COST CONCERNS DO NOT MERIT DENIAL OF THE RESALE OPTION

US West also fails to show why the additional costs of converting business lines to Flex ANI would be excessively burdensome. As noted in APCC's petition, US West's claimed burden is, at most, a rationale for allowing additional time to convert those lines. It is not a reason to eliminate the requirement to offer payphone-specific ANI digits with business lines.

US West's cost showing does not even come close to justifying a permanent waiver of the ANI digit obligation based on the standard of the Bureau's Order. See Order, ¶ 76 (a permanent waiver is justified if a LEC is unable to recover its costs through a monthly charge, over a 10-year period, of less than $7.78 per line). Furthermore, it appears that US West has overestimated its costs by at least 100%. "US West estimates that it requires approximately one hour of translation time per LCC per switch per coding digit (i.e., 70 or 29) to implement Flex ANI." US West, Declaration of Candace A. Mowers, ¶ 9. The digits "29" are used only for prison/inmate phones. Order, ¶ 20. However,

[2] Under the Commission's and various state rulings, payphone providers themselves may not subscribe to discounted wholesale rates, because they are considered to be "retail customers," not "telecommunications carriers". Local Competition Order, ¶ 876. However, all payphone providers including US West's nonregulated payphone operation have the ability to subscribe to the offerings of carriers that resell the discounted wholesale services. US West suggests no reason why a reseller would or lawfully could turn away business by refusing to offer resold business service to US West's payphone operation.

inmate payphones are entitled to dial-around compensation only in very limited circumstances. See Memorandum Opinion and Order, DA 98-642, released April 3, 1998, ¶ 18, n.52. Accordingly, there is unlikely to be any significant demand for the "29" code in this context. If US West need only implement the "70" code with business lines, its estimated costs are cut in half.

Further, even the demand for the "70" code is entirely dependent on a LEC's pricing practices regarding payphone lines and resale of payphone lines. For example, by offering a wholesale discount on payphone lines that is comparable to the wholesale discount for business lines, US West would eliminate any demand for the "70" code with business lines, and thereby avoid incurring any additional Flex ANI costs at all.

To the extent that US West or other LECs do incur additional costs as a result of their overpricing of COCOT lines, they should not be allowed any exception to the requirement that Flex ANI costs be recovered evenly from all payphones. US West at 7. Parties that subscribe to business lines are driven to do so by unfair pricing. They should not be penalized further.

CONCLUSION

The Bureau should reconsider its decision and rule that LECs are required to provide payphone coding digits for payphones connected to business, Centrex or PBX service, as well as for payphones connected to "payphone line" service.

Dated: April 30, 1998

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 30, 1998, a copy of the foregoing Reply of American Public Communications Council to Oppositions to Petition for Reconsideration was delivered by hand or first-class U.S. Mail, postage pre-paid to the following parties:

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